IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R. BASANT

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

Bail Appl..No. 4614 of 2007(B)

CRMP.892/2007 of SESSIONS COURT, KALPETTA
CRIME NO.189/2001 OF PULPALLY POLICE STATION

.....

PETITIONER/ACCUSED NO.3

RENY THOMAS, AGED 28 YEARS,
S/O. T.M.THOMAS, THALIKAPPARAMBIL HOUSE,
RESIDING AT MULLANKOLLY,
PULPALLY VILLAGE, SULTHAN BATHERY TALUK.

BY ADV. SRI.M.RAMESH CHANDER
SRI.V.TEKCHAND V

RESPONDENTS: COMPLAINANT

STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. S.U. NAZER, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.4614 of 2007

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Dated this the 30th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegation inter alia, under Section 307 IPC. He is the 3rd accused in the crime registered. Investigation is complete. Final report has been filed. The co-accused has already been acquitted and such judgment has become final also. The petitioner was not available in India. In these circumstances, he could not stand the trial along with co-accused. His absence was not intentional and was on account of reasons beyond his control, it is submitted. In these circumstances, appropriate directions may be issued under section 438 Cr.P.C and/or 482 Cr.P.C, prays the learned counsel for the petitioner.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

(R.BASANT, JUDGE)

sj